CHARLES DEGITZ

IBLA 82-1344 Decided December 9, 1982

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring the Better Days and Sunset mining claims null and void ab initio.

Set aside and remanded.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

   Where mining claims were originally located on land which was withdrawn from mineral location, the claims are null and void ab initio.

2. Mining Claims: Relocation -- Mining Claims: Withdrawn Land

   Where there are factual questions arising from affidavits presented by appellant relating to whether a filing subsequent to a withdrawal was in the nature of an "amended location," the matter will be referred for further investigation allowing the claimant reasonable time in which to show that the subsequent filing is an amended location, and that he is the successor in an unbroken chain of title dating back to the original location.

APPEARANCES: Bert L. Osborn, Esq., Payette, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charles Degitz appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated August 24, 1982, declaring the Better Days and Sunset lode mining claims null and void because the subject claims were located upon land withdrawn from mineral entry as Power Site Reserve 226 created by Executive Order dated October 22, 1913.

[1] In order to prevail with respect to these mining claims, appellant must establish that he is the successor to an interest in mining claims located on the land before its withdrawal from mineral entry, as claims which are located on land which is then withdrawn from mineral location are null and void ab initio. Lincoln Resources, 66 IBLA 310 (1982); Fairfield Mining Co., 66 IBLA 115 (1982).

The Better Days and Sunset lode mining claims were the subject claims of mining location notices, Instrument Nos. 37430 and 37429, respectively, recorded July 11, 1956. According to statements recited in these location notices, these mining claims were located on June 19, 1955. 1/ The 1956 location notices were submitted by appellant to BLM in March 1979.

In his statement of reasons, appellant asserts that these claims were established in 1899. Attached to his statement were copies of four mining claim location notices dated in 1899 for claims located by G. W. McCarty, W. H. Watt, and A. K. Zigler, known as Cuprum, Paymaster No. 1, Paymaster No. 2, and Fairview. 2/ Appellant suggests that the problem in identification exists because Adams County, wherein his claims are situated, was part of Washington County in 1899.

The essential question of this appeal is whether the documents filed in 1956 were amended notices of the 1899 locations or whether they were new locations or relocations made after the land had been withdrawn. Nothing on the face of the 1956 notices indicates that they were amended locations or relocations. There is no requirement that an amended location or a relocation state that this is its purpose. R. Gail Tibbetts, 43 IBLA 210, 228, 86 I.D. 538 (1979). Absent any such declaration, however, a presumption arises that the notice refers to a new location created on the date stated therein. Id. at 228-29.

The present record lacks a showing by appellant that he is a successor in an unbroken chain dating back to claims established before the withdrawal of the land in 1913, as suggested in the statement of reasons. Appellant has provided the 1899 notices of location. There is nothing to reflect a relationship between those documents and the 1956 notices. The 1956 notices do not recite anything except that they are pursuant to respective 1955 locations. As there are no documents provided that would give the slightest suggestion that a significant relationship exists between the 1899 locations and the 1956 notices, appellant has left us with a very large gap in the chain of succession to the 1899 claims.

Appellant submitted four affidavits by individuals acquainted with the 1899 claims and appellant's present claims. All four persons aver that the

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1/ The June 19, 1955, locations preceded the Mining Claims Restoration Act of 1955, 30 U.S.C. § 621 (1976). A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite are null and void ab initio and the passage of the Act did not give life to void claims which had been located on withdrawn lands prior to its effective date. John C. Farrell, 55 IBLA 42 (1981).

2/ No effort is made by appellant to explain how these four claims became the two claims which are the subject of this appeal.

land within appellant's claims is that land which was within the 1899 claims appellant claims succession to. One affiant declares that the 1899 claims passed from the original locators eventually to appellant. Another refers to appellant's claim as a later filing on the same property as the original claims.

[2] The burden is upon appellant to present substantial evidence that a decision is improper or unreasonable. In the present situation, there is inadequate documentation to affirm appellant's contention. The affidavits presented, although not proof of the facts contained therein, constitute sufficient evidence to warrant further inquiry or investigation. Fairfield Mining Co., Inc., supra. In Fairfield, the appellant was provided a hearing where it was given the opportunity to establish the chain of succession from mining claims that were located prior to a withdrawal from mineral entry. The appellant there, however, had previously submitted documentation and pleaded facts that strongly suggested a relationship between its alleged "amended" locations and the prewithdrawal locations. Appellant in this appeal has not proferred anything beyond the affidavits mentioned that would suggest an unbroken chain of title. Although the evidence does not appear sufficient enough to refer this appeal for a hearing 3/, the case should be reviewed by the Idaho State Office and appellant should be allowed a reasonable time to present evidence of an unbroken chain of title between the 1899 locations and the 1955 locations. Appellant must be able to establish that the 1955 locations are not new locations or relocations, but amended locations. See R. Gail Tibbetts, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

3/ The allowance of a request for hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an Administrative Law Judge for a hearing on an issue of fact. 43 CFR 4.415.